

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 695 of 1997

in

SPECIAL CIVIL APPLICATION No 6008 of 1996

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHA PRABHU APARTMENT

Appearance:

GOVERNMENT PLEADER for Appellant
M/S THAKKAR ASSOC. for Respondent No. 1
MR PRASHANT G DESAI for Respondent No. 2

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 03/11/1999

ORAL JUDGEMENT

(per Thakkar,Actg.C.J)

1. The matter is already admitted. The learned Single Judge in Special Civil Application No.6008 of 1996 (along with Special Civil Application No.4830 of 1985 with which we are not concerned) passed an order on May 6, 1997, operative part of which reads as under:

"(i) The respondent, Ahmedabad Municipal Corporation, is directed to hand over possession of Final Plot Nos 650, 651/1 and 651/2 to the respective petitioners within one month from the receipt of writ treating the existing road as the proposed road in the Town Planning Scheme No.28 of New Wadaj and closing the road as proposed in the scheme. The proposed road in the plan annexed with the affidavit in reply is demarcated in blue lines whereas existing road in red lines and the boundaries of respective plots and demarcated in red colour. This plan shall form part of order and basis for allotment and handing over possession of respective plots to the respective petitioners. Upon possession of plots being given the petitioners shall be at liberty to put wire fencing as per demarcation around the plots in presence of officers of respondent-Municipal Corporation.

(ii) The Board of Appeals (City Civil Court, Ahmedabad) is hereby directed to dispose of Town Planning Appeal No.1 of 1997 on or before 31.12.1997.

(iii) The Town Planning Officer of respondent-Corporation is directed to make variation to the aforesaid effect within six months from today by dispensing with the procedure prescribed under law. Rule is made absolute to the aforesaid extent. No order as to costs. Copy of writ also be sent to the Board of Appeals (City Civil Court, Ahmedabad)."

2. Having heard the learned advocates for parties, we are of the view that directions issued by the learned Single Judge can not be sustained. Even if the Town Planning Scheme is to be varied, it can only be varied in accordance with the provisions of Gujarat Town Planning and Urban Development Act, 1976.

3. Mr.Pahwa, learned advocate for original petitioner (respondent No.1 herein) stated that though he has lost the ownership of the original plot he has not got the plot in lieu thereof. In peculiar facts and circumstances, in our opinion, interest of justice would be met if we direct the respondent No.2-Ahmedabad Municipal Corporation to submit varied approved scheme to the appellant-State in accordance with the provisions of the Act within a period of six months from today. After the varied scheme is received by the appellant, the appellant will finalise it in accordance with the provisions of the Act as expeditiously as possible but latest within two months from the receipt thereof. Appeal is accordingly allowed and the judgment and order passed by the learned Single Judge is substituted by the order passed by us. In the facts and circumstances, no order as to costs.

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